

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

CHRISTOPHER PICKENS,

Petitioner,

Case No. 06-C-199

v.

WARDEN PHIL KINGSTON,

Respondent.

OPINION AND ORDER

Christopher Pickens, a prisoner in state custody, is seeking a writ of habeas corpus. See 28 U.S.C. § 2254. He was convicted and sentenced on November 19, 2002. On December 22, 2005, he was found guilty of battery, threats and disobeying orders while in prison, so his sentence was extended. He says that he has not exhausted his state remedies as required by habeas corpus procedure¹ because it would be “futile because this effect the Petitioner release from prison, where by a expedited hearing is requested.” Petitioner for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody at section IV.

Pickens’ stated reason for failure to exhaust is not legally sufficient. See White v. Peters, 990 F.3d 328, 341 (7th Cir. 1993). Therefore, the court concludes that Pickens has procedurally defaulted his claims and has not established cause for the default and ORDERS that Pickens’ “Petition for Writ of Habeas Corpus Pursuant to 28

¹ See Lewis v. Starnes, 390 F.3d 1019, 1025 (7th Cir. 2004) (Inherent in the habeas petitioner’s obligation to exhaust his state court remedies before seeking relief in habeas corpus is the duty to fairly present his federal claims to the state courts).

U.S.C. § 2254 by a Person in State Custody” (filed February 17, 2006) IS DISMISSED without prejudice.

IT IS FURTHER ORDERED that this action is dismissed without prejudice.

IT IS FURTHER ORDERED that Pickens’ “Motion for Appointment of Counsel” (filed February 17, 2006) IS DENIED.

IT IS FURTHER ORDERED that Pickens’ “Petition for Leave to Proceed in Forma Pauperis” (filed February 17, 2006) IS DENIED because this action is being dismissed.

IT IS FURTHER ORDERED that the Clerk of Court shall enter a judgment of dismissal as a separate document. See Federal Rule of Civil Procedure 58. This judgment shall provide that:

Petitioner Christopher Pickens brought this petition for a writ of habeas corpus before the court, the Honorable Thomas J. Curran, District Judge, presiding, and the petition having been dismissed for failure to exhaust administrative remedies,

IT IS ORDERED AND ADJUDGED

that this action is dismissed without prejudice.

Done and Ordered in Chambers at the United States Courthouse, Milwaukee, Wisconsin, this 22nd day of February, 2006.

s/ Thomas J. Curran
Thomas J. Curran
United States District Judge